

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

LIFESTAR RESPONSE )  
CORPORATION )  
 )  
Plaintiff, )  
 )  
v. ) CIVIL ACTION NO. CV-05-F-1013-N  
 )  
MILDRED LEMUEL, individually )  
and as purported Aministratix of )  
the Estate of Darnell Eugene Lemuel,)  
PEGGY JO LEMUEL, JACINTA )  
LEMUEL BENDER and CYNDAL )  
ANNETTE PROVENZANO )  
 )  
Defendants. )

**MOTION TO DISMISS**

COME NOW Defendants Peggy Jo Lemuel, Jacinta Lemuel Bender and Cyndal Annette Prevenzano (collectively “the heir Defendants”) and move, pursuant to Federal Rules of Civil Procedure 12 (b) (1) and (6), to dismiss the declaratory judgment action filed by Lifestar Response Corporation (“Lifestar Response” or “Plaintiff”), and show as follows:

1. Lifestar Response purports to bring this action pursuant to 28 U.S.C. § 2201, the Declaratory Judgment Act. The facts alleged do not create a proper justiciable controversy. Therefore, this Court does not have subject matter jurisdiction over the Complaint and the Complaint also fails to state a claim. The Complaint should be dismissed pursuant to F.R.C.P. Rules 12 (b) (1) and (6).
2. In support of the Motion to Dismiss, the heir Defendants submit an accompanying brief.

WHEREFORE, Defendants Peggy Jo Lemuel, Jacinta Lemuel Bender and Cyndal Annette Prevenzano pray that the Court will grant this Motion to Dismiss and dismiss the Complaint filed by Plaintiff Lifestar Response Corporation in its entirety, and grant such further relief as the Court deems appropriate.

s/ C. Nelson Gill  
Richard H. Gill (GIL007)  
John A, Henig, Jr. (HEN019)  
C. Nelson Gill (GIL055)

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **David B. Anderson**  
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and a copy of same, by First Class, U.S. Mail, postage prepaid, to the following:

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s/ C. Nelson Gill  
C. Nelson Gill (GIL055)